



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office Of The Assistant Secretary

MEMORANDUM FOR ALMAJCOM/FOA/DRU (CONTRACTING)

18 OCT 2004

FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Justifications for Non-Competitive Contracts Under Exception 1 to the
Competition in Contracting Act (CICA)

Recently, Dr. Sambur has expressed concerns with the quality of some justifications for non-competitive contracts. Particularly, there have been several Exception 1 justifications that did not meet the standards established by the CICA as implemented in the FAR. Any justification that is written in a boilerplate style without careful attention to substantiating data is unacceptable. Therefore, I'd like to review some of these standards with you.

The CICA (as implemented in FAR 6.302-1) provides, in part, that full and open competition is not required when the supplies or services needed by the agency are available from only one responsible source, or from a limited number of responsible sources and no other type of supplies or services will satisfy the needs of the agency. CICA also provides that in the case of a follow-on contract from the original source for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such supplies or services may be deemed to be available from the original source and may be procured through non-competitive procedures when it is likely that award to a source other than the original source would result in--(i) substantial duplication of cost to the United States that is not expected to be recovered through competition; or (ii) unacceptable delays in fulfilling the agency's needs.

Under CICA, the official approving the justification must determine that either (i) a substantial duplication of costs will occur and the amount of these duplicated costs are not likely to be recovered through competition or (ii) delays in fulfilling the agency's needs are unacceptable. To make an informed decision on whether the amount of duplicated costs is substantial, the approving official must be provided with an estimate of the amount of those costs, and an explanation of how the estimate was derived. See FAR 6.303-2 (a)(9)(ii). Similarly, to make an informed decision on whether the amount of duplicated costs is likely to be recovered through competition, estimate the amount of duplicated costs to go through the competitive process and offset that by the amount of cost savings that are likely to be generated by competition. Finally, to make an informed decision on whether anticipated delays in fulfilling the agency's needs are "unacceptable", the approving official must necessarily be provided with the length of the anticipated delay, and a description of exactly what is being delayed.

Contracting officers are responsible for preparing the justification for contracting without full and open competition, as a stand-alone document, and for certifying the accuracy and completeness of the justification (see FAR 6.303-1). Accordingly, I want to emphasize the requirement that contracting officers include in all justifications proposed for approval under FAR 6.302-1(a)(2)(ii)(A) or (iii)(A) their best estimates of the amount of duplicated costs to be incurred and of the cost savings that are likely to be recovered through competition. The justification needs to also explain the basis for the estimate of duplicated costs. All justifications proposed for approval under FAR 6.302-1(a)(2)(ii)(B) or (iii)(B) shall include the contracting officer's best estimate of the delay that will occur in fulfilling the agency's needs. Document the basis for these estimates and include it in the contract file.

Please direct any questions concerning this policy to Mr. David Powell, SAF/AQCP, at DSN 425-7062.

A handwritten signature in black ink, appearing to read "Charlie E. Williams, Jr.", with a horizontal line extending to the right.

CHARLIE E. WILLIAMS, JR.
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)